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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/621,904	07/17/2003	Larry G. Willemsen	KSR-11302/08	2130

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EXAMINER	
LUONG, VINH	

ART UNIT	PAPER NUMBER
3682	

DATE MAILED: 09/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/621,904	WILLEMSEN ET AL.	
	Examiner	Art Unit	
	Vinh T. Luong	3682	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *27 June 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-33* is/are pending in the application.

4a) Of the above claim(s) *20-22* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,2,4-14,16-19,23,24 and 27-33* is/are rejected.

7)☒ Claim(s) *3,15,25 and 26* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *01 February 2005* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Vinh T. Luong
Primary Examiner

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☒ Other: *Attachment*.

1. The Amendment filed on June 27, 2005 has been entered.

2. Claims 20-22 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on January 18, 2005.

3. The drawings were received on February 1, 2005. These drawings are not accepted by the Examiner because of the reasons, *inter alia*, listed below:

(a) The various parts in Fig. 10 should be embraced by a bracket in order to show their relationship; and

(b) The drawings are inconsistent with the specification or *vice versa, e.g.*, page 7 of the specification describes the lower member 40c in Figs. 1 and 2, however, Figs. 1 and 2 do not show the referential numeral 40c.

See 37 CFR 1.84.

4. The drawings are objected to because of the reasons, *inter alia*, listed below:

(a) The various parts in Fig. 10 should be embraced by a bracket in order to show their relationship; and

(b) The drawings are inconsistent with the specification or *vice versa, e.g.*, page 7 of the specification describes the lower member 40c in Figs. 1 and 2, however, Figs. 1 and 2 do not show the referential numeral 40c.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet,

even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

5. The listing of references in the specification (e.g., EP 0748713 on page 2) is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

6. The disclosure is objected to because of the following informalities: the specification is inconsistent with the drawings or *vice versa, e.g.,* page 7 of the specification describes the lower member 40c in Figs. 1 and 2, however, Figs. 1 and 2 do not show the referential numeral 40c. Appropriate correction is required.

7. Claims 9, 19, and 30 are objected to because of the informalities, such as, no antecedent basis is seen for the terms, such as, "said housing rear wall" in claims 9, 19, and 30. Appropriate correction is required.

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 4, 6, 9, 16, 19, and 30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear whether:

(a) the terms that appear at least twice, such as, (1) "a friction lever" and "a friction lever pivot point" in claim 6/2/1; and (2) "a friction lever" in claim 19/14 refer to the same or different things. See MPEP 2173.05(o); and

(b) a confusing variety of terms, such as, (1) "a frictional hysteresis force" and "an increasing frictional hysteresis force" in claims 4/3/2/1, 9/1, 16/15, ; (2) "a friction wall" and "an arcuate friction wall" in claims 9/1 and 30/23 refer to the same or different things. See MPEP §§ 2173.05(o) and 608.01(o).

10. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

11. Claims 1, 2, 5, 7, 8, 10-14, 17, 19, 23, 24, 27, 29, and 31-33, and claims 9, 19, and 30, as best understood, are rejected under 35 U.S.C. 102(e) as being anticipated by DeForest (US Patent No. 6,860,170 B2 cited in the first Office action).

Regarding claim 1, DeForest teaches an electronically controlled pedal assembly with hysteresis comprising:

a housing 20 having a front wall 24 (Figs. 5-7) and an arcuate friction wall 108 extending from an edge of said front wall 24 wherein said friction wall 108 has a radius of curvature d_1 or d_2 centered on a pedal arm pivot point 52 (Fig. 6);

a pedal arm 14 having an upper arm (see Attachment) and a lower arm (Att.) and is rotatably supported at said pedal arm pivot point 52 that is between said upper pedal arm (Att.) and said lower pedal arm (Att.) by a mounting means 52 operatively connected to said housing 20;

a hysteresis generating means 18 (*id.*, col. 8, line 1 *et seq.*) pivotally mounted to said upper pedal arm (by a cavity 112 wherein the hysteresis is pivoted about the pivot 52 as seen in Fig. 6. *Ibid.*, col, 8, lines 19-49); and

a spring 80, 82 positioned between said housing 20 and said hysteresis generating means 18, wherein said spring 80, 82 biases said hysteresis generating means 18 against said housing 20, such that depression of said pedal arm 14 compresses said spring 80, 82 while generating an increasing frictional hysteresis force between said arcuate friction wall 108 and said hysteresis generating means 18 that is translated back through said pedal arm 14, and release of said pedal arm 14 reduces the frictional hysteresis force.

Claim 1 and other claims below are "fully met" by DeForest because Applicant's claims do not specifically require the hysteresis generating means to be pivoted *relative to* the upper pedal arm. Therefore, DeForest's hysteresis generating means 18, which is pivoted about the pivot 52 "reads on" Applicant's claimed hysteresis generating means. It is well settled that

anticipation law requires distinction be made between invention described or taught and invention claimed. It does not require that the reference "teach" what subject patent application teaches, it is only necessary that the claim under attack, as construed by the Court, "*read on*" something disclosed in the reference, *i.e.*, all limitations of the claim are found in reference, or are "*fully met*" by it. *Kalman v. Kimberly Clark Corp.*, 218 USPQ 781, 789 (CAFC 1983).

Regarding claim 2, said hysteresis generating means 18 is a friction lever 102 pivotally mounted (by the cavity 112) to an outer end (Att.) of said upper pedal arm (Att.) at a friction lever pivot point 52. Note that Applicant's claim 2 does not preclude the embodiment that has the friction lever pivot point being coincident with the pedal arm pivot point. Therefore, Applicant's claim 2 is "fully met" by DeForest. *Kalman v. Kimberly Clark Corp., supra.*

Regarding claim 5, said friction lever 18 includes an *integrally* formed main member 110 and an upper arcuate member 106 extending *forwardly* from an upper end (Att.) of said main member 110, and an upper surface 106 of said friction lever upper member 106 is abraded to frictionally engage said housing friction wall 108.

Regarding claim 7, said pedal arm 14 includes a disk portion (Att.), and said lower pedal arm (Att.) extends from a lower edge (Att.) of said disk portion (Att.) and said upper pedal arm (Att.) extends from an upper edge (Att.) of said disk portion (Att.).

Regarding claim 8, said mounting means is a post and bushing 52, 50, 54 (Fig. 5).

Regarding claim 9, said hysteresis generating means includes:

a friction wall 27 extending radially from said housing front wall 24, wherein said friction wall 27 includes an arcuate frictional surface 108, and is positioned between a housing rear wall 28 (id., col. 4, lines 44-52) and said pedal arm 14; and

a friction lever 18 having a first portion 110 pivotally mounted to said pedal arm 14 (by the pivot 52) and a second portion 106 in frictional contact with said friction wall 27 to generate a frictional hysteresis force during actuation of said pedal arm 14.

Regarding claim 10, DeForest's pedal assembly further comprises:

a cap 22 mounted to said housing 20 (Fig. 5);

an alignment post (unnumbered in Fig. 5. See Att.) extending radially from a face portion of said cap 22, wherein said alignment post (Att.) aligns said cap 22 with said pedal arm pivot point 52;

a plurality of mounting posts 62 (Fig. 5) extending radially from said cap face portion 22;

an induction sensor 16 for sensing the position of said pedal arm 14 operatively mounted on said cap pedal arm pivot point alignment post (Att.) and said cap mounting posts 62, wherein said induction sensor 16 inherently includes a first rotor and a second rotor and a stator suspended between said first and second rotors. Note that the sensor that includes first and second rotors and the stator is conventional and notoriously well known in the art. See, *e.g.*, US Patent No. 6,384,598 issued to Hobein et al. cited by Applicant.

Regarding claim 11, said cap alignment post (Att.) is *operatively* supported on said pedal arm mounting means 52.

Regarding claim 12, said cap 22 includes at least one slot (Fig. 5. See Att.) for securing the cap assembly 22 to said housing 20 in a predetermined position (by screws 32).

Regarding claim 13, DeForest's sensor inherently has the first rotor including a generally

planar member with conductive plates positioned above a radially extending center post, and said second rotor is a generally planar member with conductive plates positioned thereon relative to said first rotor conductive plates and a center mounting aperture, and said stator is mounted onto a generally planar circuit board supported by said cap mounting posts. Note that this type of induction sensor is conventional and notoriously well known in the art. See, *e.g.*, US Patent No. 6,384,598 issued to Hobein et al cited by Applicant.

Regarding claim 14, DeForest teaches an electronically controlled pedal assembly with hysteresis comprising:

a housing 20 having a front wall 24 and an arcuate friction wall 27 extending from an edge of said front wall 24 wherein said friction wall 27 has a radius of curvature centered on a pedal arm pivot point 52;

a pedal arm 14 rotatably supported at said pedal arm pivot point 52 by a mounting means 52 operatively connected to said housing 20, wherein said pedal arm 14 includes a disk portion (Fig. 6, Att.), a lower pedal arm (Att.) extending from a lower edge (Att.) of said disk portion (Att.) and an upper arm (Att.) extending from an upper edge (Att.) of said disk portion (Att.) and said pedal arm pivot point 52 is between said upper pedal arm (Att.) and said lower pedal arm (Att.);

a hysteresis generating means 18 pivotally mounted to said upper pedal arm (by the cavity 112 so as to pivot about the pivot axis 52 as seen in Fig. 6. See Att.), wherein said hysteresis generating means 18 is a friction lever 102 pivotally mounted (by the cavity 112) to an outer end (Fig. 6. See Att.) of said upper pedal arm (Att.) at a friction lever pivot point 52; and

a spring 80, 82 positioned between said housing 20 and said hysteresis generating

means 18, wherein said spring 80, 82 biases said hysteresis generating means 18 against said housing 20, such that depression of said pedal arm 14 compresses said spring 80, 82 while generating an increasing frictional hysteresis force between said arcuate friction wall 27 and said hysteresis generating means 18 that is translated back through said pedal arm 14, and release of said pedal arm 14 reduces the frictional hysteresis force.

Note that Applicant's claim 14 does not preclude the embodiment that has the friction lever pivot point being coincident with the pedal arm pivot point. Therefore, Applicant's claim 2 is "fully met" by DeForest. *Kalman v. Kimberly Clark Corp., supra.*

Regarding claims 17 and 19, see regarding claims 5 and 9 above.

Regarding claim 23, see regarding claims 1 and 10 above.

Regarding claims 24, 27, and 29-33, see regarding claims 2, 5, 8, 9, and 11-13 above.

12. Claims 10-13, 23, 24, 27, 29, 31-33, and claim 30, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over DeForest in view of Hobein et al.

Regarding claims 10-13, 23, 24, 27, and 29-33, DeForest teaches the invention substantially as claimed. See the explanation in the rejection under 35 USC 102 above. However, DeForest does not explicitly teach the sensor that comprises first and second rotors, a stator, conductive plates, and a center mounting aperture.

Hobein teaches a conventional sensor that comprises first and second rotors, a stator, conductive plates, and a center mounting aperture, *etc.* in order to sense the displacement of a pedal arm. See Hobein's Summary of the Invention.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use Hobein's sensor in order to sense the displacement of DeForest's pedal arm as taught or suggested by Hobein.

13. Claims 6, 18, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over DeForest in view of applicant's own admission that Groups I-IV are not patentably distinct (see response filed January 18, 2005, pp. 2, lines 12-13).

To modify the apparatus of DeForest so as to include the claimed structure would have been obvious to one of ordinary skill in the art at the time the invention was made as evidenced by applicant's admission in response filed January 18, 2005.

14. Claims 3, 15, 25, and 26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

15. Claims 4 and 16 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

16. As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Cooling et al. (friction surface 28), Kalsi'222 (upper arm 48 and lower arm 12 in Figs. 5 and 6), and Menzies (friction surface 80 in Fig. 4).

18. Applicant's arguments filed June 27, 2005 have been fully considered but they are not persuasive.

The Examiner agrees with Applicant's contention that Campbell does not disclose: (a) a pedal assembly defined by an upper pedal arm and a lower pedal arm, and the pedal assembly pivots about a pedal arm pivot point that is between the upper pedal arm and lower pedal arm; and (b) a pedal assembly having a hysteresis generating means pivotally mounted to the upper pedal arm. See page 15 of the Amendment. The previous rejection is withdrawn in view of amended claims 1-19 and 23-33. However, Applicant's amendment necessitated new grounds of rejections as seen above.

19. Applicant's arguments with respect to claims 1-19 and 23-33 have been considered but are moot in view of the new ground(s) of rejection.

20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vinh T. Luong whose telephone number is 571-272-7109. The examiner can normally be reached on Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor can be reached on 571-272-7095. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

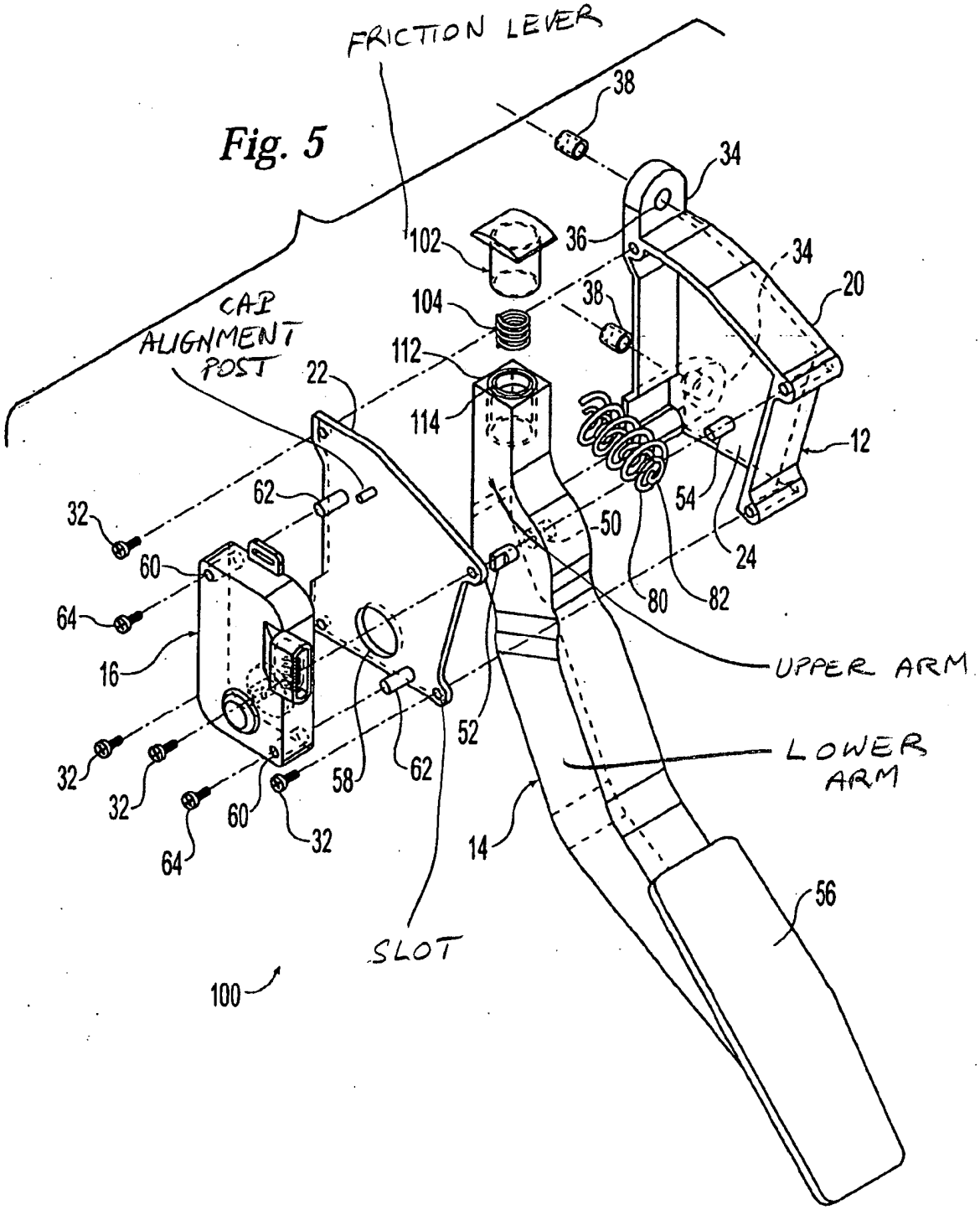
Luong

September 19, 2005

Vinh T. Luong
Primary Examiner

ATTACHMENT

Fig. 5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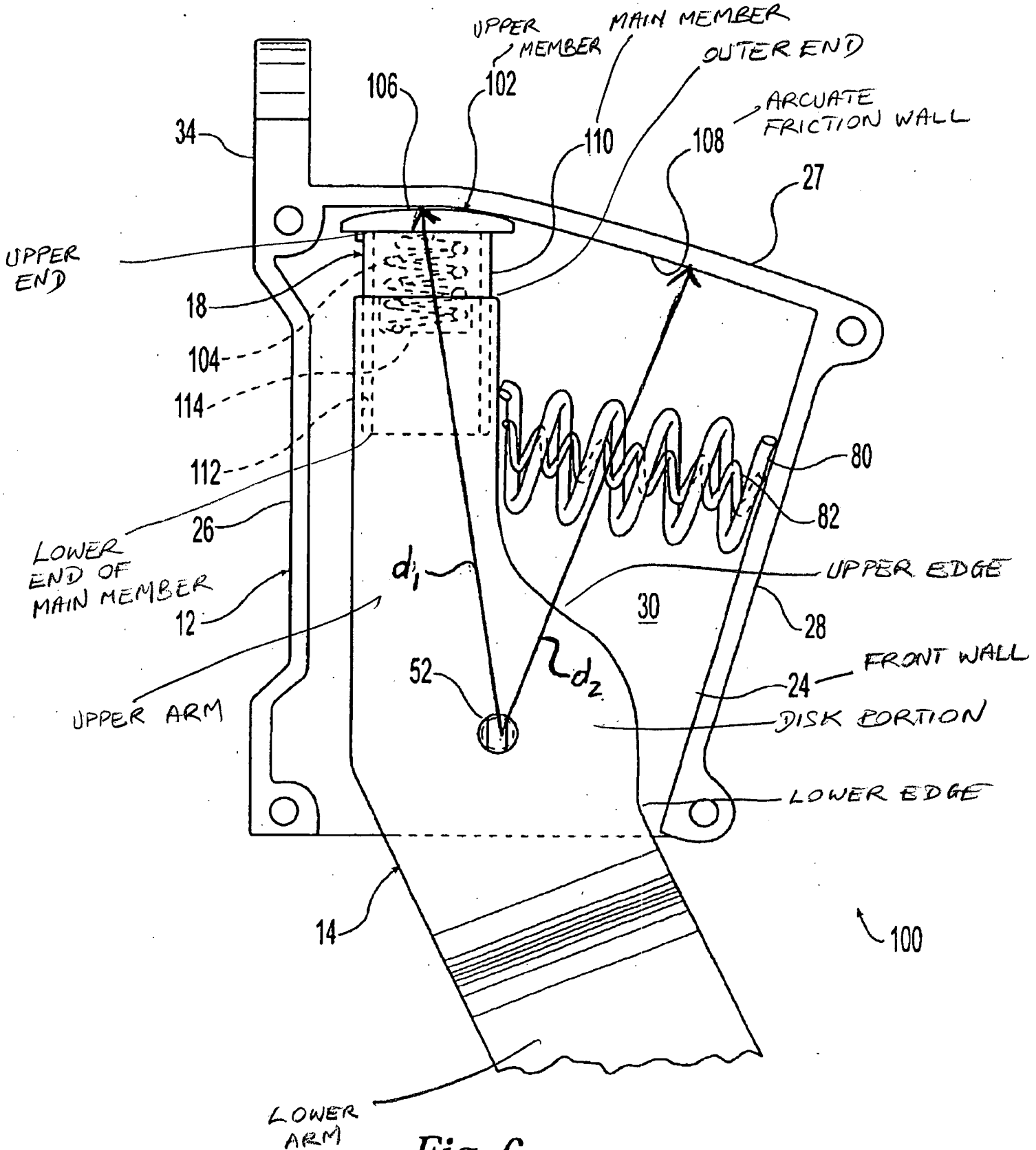
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MAIN MEMBER
OUTER END
ARCUATE FRICTION WALL
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102
110
108
34
27
UPPER END
18
104
114
112
26
LOWER END OF MAIN MEMBER
12
80
82
d_1
UPPER EDGE
30
28
52
d_2
FRONT WALL
24
UPPER ARM
DISK PORTION
LOWER EDGE
14
100
LOWER ARM

Fig. 6